

Assembly Bill No. 2369

Passed the Assembly August 20, 1998

Chief Clerk of the Assembly

Passed the Senate August 18, 1998

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1998, at ____ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

An act to amend Sections 11370.4, 11374.5, and 11379.8 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 2369, Wayne. Controlled substances: penalties.

Existing law requires that persons convicted of the unlawful possession for sale, transportation, importation, sale, furnishing, manufacture of, or certain related offenses involving methamphetamine, amphetamine, or phencyclidine (PCP) receive additional terms of imprisonment depending on the weight or volume of the substances.

This bill would delete the manufacture of methamphetamine, amphetamine, or PCP from the offenses specified for purposes of this provision.

Existing law requires any manufacturer of a controlled substance who is convicted of disposing of any hazardous substance that is a controlled substance or a chemical used in the manufacture of a controlled substance in violation of any law regulating the disposal of hazardous substances or hazardous waste to pay a penalty equal to the amount of the actual cost of any gross evidence removal of hazardous substances or hazardous waste that is incurred by an agency as a result of the illegal disposal.

This bill additionally would require any person who is convicted of the manufacture, sale, possession for sale, possession, transportation, or disposal of any hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance in violation of any law to pay a penalty equal to the amount of the actual cost incurred by any state or local agency to remove and dispose of the hazardous substance and to take removal action with respect to any release of the hazardous substance or any items or materials contaminated by that release, if the



state or local agency requests the prosecuting authority to seek recovery of that cost.

Existing law imposes enhancements upon persons convicted of the unlawful manufacture of large quantities of methamphetamine, amphetamine, or phencyclidine (PCP), as determined by the weight or volume of the substances involved.

This bill would amend certain of these provisions setting forth enhancements to be imposed upon persons convicted of the unlawful manufacture of large quantities of methamphetamine, amphetamine, or phencyclidine (PCP), as determined by the weight or volume of the substances involved.

This bill would add certain provisions that would become operative only if both this bill and SB 1691 are enacted and become effective on or before January 1, 1999, and SB 1691 amends a specified provision of the Health and Safety Code to provide criminal penalties for the sale of ephedrine.

The people of the State of California do enact as follows:

SECTION 1. Section 11370.4 of the Health and Safety Code is amended to read:

11370.4. (a) Any person convicted of a violation of, or of a conspiracy to violate, Section 11351, 11351.5, or 11352 with respect to a substance containing heroin, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or cocaine as specified in paragraph (6) of subdivision (b) of Section 11055 shall receive an additional term as follows:

(1) Where the substance exceeds one kilogram by weight, the person shall receive an additional term of three years.

(2) Where the substance exceeds four kilograms by weight, the person shall receive an additional term of five years.

(3) Where the substance exceeds 10 kilograms by weight, the person shall receive an additional term of 10 years.



(4) Where the substance exceeds 20 kilograms by weight, the person shall receive an additional term of 15 years.

(5) Where the substance exceeds 40 kilograms by weight, the person shall receive an additional term of 20 years.

(6) Where the substance exceeds 80 kilograms by weight, the person shall receive an additional term of 25 years.

The conspiracy enhancements provided for in this subdivision shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.

(b) Any person convicted of a violation of, or of conspiracy to violate, Section 11378, 11378.5, 11379, or 11379.5 with respect to a substance containing methamphetamine, amphetamine, phencyclidine (PCP) and its analogs shall receive an additional term as follows:

(1) Where the substance exceeds one kilogram by weight, or 30 liters by liquid volume, the person shall receive an additional term of three years.

(2) Where the substance exceeds four kilograms by weight, or 100 liters by liquid volume, the person shall receive an additional term of five years.

(3) Where the substance exceeds 10 kilograms by weight, or 200 liters by liquid volume, the person shall receive an additional term of 10 years.

(4) Where the substance exceeds 20 kilograms by weight, or 400 liters by liquid volume, the person shall receive an additional term of 15 years.

In computing the quantities involved in this subdivision, plant or vegetable material seized shall not be included.

The conspiracy enhancements provided for in this subdivision shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the planning, direction, execution, or financing of the underlying offense.



(c) The additional terms provided in this section shall not be imposed unless the allegation that the weight of the substance containing heroin, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, cocaine as specified in paragraph (6) of subdivision (b) of Section 11055, methamphetamine, amphetamine, or phencyclidine (PCP) and its analogs exceeds the amounts provided in this section is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(d) The additional terms provided in this section shall be in addition to any other punishment provided by law.

(e) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

SEC. 2. Section 11374.5 of the Health and Safety Code is amended to read:

11374.5. (a) Any manufacturer of a controlled substance who disposes of any hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance in violation of any law regulating the disposal of hazardous substances or hazardous waste is guilty of a public offense punishable by imprisonment in the state prison for two, three, or four years or in the county jail not exceeding one year.

(b) (1) In addition to any other penalty or liability imposed by law, a person who is convicted of violating subdivision (a), or any person who is convicted of the manufacture, sale, possession for sale, possession, transportation, or disposal of any hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance in violation of any law, shall pay a penalty equal to the amount of the actual cost incurred by the state or local agency to remove and dispose of the hazardous substance that is a controlled substance or a chemical used in, or is



a byproduct of, the manufacture of a controlled substance and to take removal action with respect to any release of the hazardous substance or any items or materials contaminated by that release, if the state or local agency requests the prosecuting authority to seek recovery of that cost. The court shall transmit all penalties collected pursuant to this subdivision to the county treasurer of the county in which the court is located for deposit in a special account in the county treasury. The county treasurer shall pay that money at least once a month to the agency that requested recovery of the cost for the removal action. The county may retain up to 5 percent of any assessed penalty for appropriate and reasonable administrative costs attributable to the collection and disbursement of the penalty.

(2) If the Department of Toxic Substances Control has requested recovery of the cost of removing the hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance or taking removal action with respect to any release of the hazardous substance, the county treasurer shall transfer funds in the amount of the penalty collected to the Treasurer, who shall deposit the money in the Illegal Drug Lab Cleanup Account, which is hereby created in the General Fund in the State Treasury. The Department of Toxic Substances Control may expend the money in the Illegal Drug Lab Cleanup Account, upon appropriation by the Legislature, to cover the cost of taking removal actions pursuant to Section 25354.5.

(3) If a local agency and the Department of Toxic Substances Control have both requested recovery of removal costs with respect to a hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance, the county treasurer shall apportion any penalty collected among the agencies involved in proportion to the costs incurred.

(c) As used in this section the following terms have the following meaning:



(1) “Dispose” means to abandon, deposit, intern, or otherwise discard as a final action after use has been achieved or a use is no longer intended.

(2) “Hazardous substance” has the same meaning as defined in Section 25316.

(3) “Hazardous waste” has the same meaning as defined in Section 25117.

(4) For purposes of this section, “remove” or “removal” has the same meaning as set forth in Section 25323.

SEC. 2.5. Section 11374.5 of the Health and Safety Code is amended to read:

11374.5. (a) Any manufacturer of a controlled substance who disposes of any hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance in violation of any law regulating the disposal of hazardous substances or hazardous waste is guilty of a public offense punishable by imprisonment in the state prison for two, three, or four years or in the county jail not exceeding one year.

(b) (1) In addition to any other penalty or liability imposed by law, a person who is convicted of violating subdivision (a), or any person who is convicted of the manufacture, sale, possession for sale, possession, transportation, or disposal of any hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance in violation of any law, shall pay a penalty equal to the amount of the actual cost incurred by the state or local agency to remove and dispose of the hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance, and to take removal action with respect to any release of the hazardous substance or any items or materials contaminated by that release, if the state or local agency requests the prosecuting authority to seek recovery of that cost. The court shall transmit all penalties collected pursuant to this subdivision to the county treasurer of the county in which the court is located for

deposit in a special account in the county treasury. The county treasurer shall pay that money at least once a month to the agency that requested recovery of the cost for the removal action. The county may retain up to 5 percent of any assessed penalty for appropriate and reasonable administrative costs attributable to the collection and disbursement of the penalty.

(2) If the Department of Toxic Substances Control has requested recovery of the cost of removing the hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance or taking removal action with respect to any release of the hazardous substance, the county treasurer shall transfer funds in the amount of the penalty collected to the Treasurer, who shall deposit the money in the Illegal Drug Lab Cleanup Account, which is hereby created in the General Fund in the State Treasury. The Department of Toxic Substances Control may expend the money in the Illegal Drug Lab Cleanup Account, upon appropriation by the Legislature, to cover the cost of taking removal actions pursuant to Section 25354.5.

(3) If a local agency and the Department of Toxic Substances Control have both requested recovery of removal costs with respect to a hazardous substance that is a controlled substance or a chemical used in, or is a byproduct of, the manufacture of a controlled substance, the county treasurer shall apportion any penalty collected among the agencies involved in proportion to the costs incurred.

(4) This subdivision shall not apply to a violation of paragraph (3) of subdivision (g) of Section 11100.

(c) As used in this section the following terms have the following meaning:

(1) “Dispose” means to abandon, deposit, intern, or otherwise discard as a final action after use has been achieved or a use is no longer intended.

(2) “Hazardous substance” has the same meaning as defined in Section 25316.



(3) “Hazardous waste” has the same meaning as defined in Section 25117.

(4) For purposes of this section, “remove” or “removal” has the same meaning as set forth in Section 25323.

SEC. 3. Section 11379.8 of the Health and Safety Code is amended to read:

11379.8. (a) Any person convicted of a violation of subdivision (a) of Section 11379.6, or of a conspiracy to violate subdivision (a) of Section 11379.6, with respect to any substance containing a controlled substance which is specified in paragraph (21), (22), or (23) of subdivision (d) of Section 11054, or in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) or in paragraph (2) of subdivision (f) of Section 11055 shall receive an additional term as follows:

(1) Where the substance exceeds three gallons of liquid by volume or one pound of solid substances by weight, the person shall receive an additional term of three years.

(2) Where the substance exceeds 10 gallons of liquid by volume or three pounds of solid substance by weight, the person shall receive an additional term of five years.

(3) Where the substance exceeds 25 gallons of liquid by volume or 10 pounds of solid substance by weight, the person shall receive an additional term of 10 years.

(4) Where the substance exceeds 105 gallons of liquid by volume or 44 pounds of solid substance by weight, the person shall receive an additional term of 15 years.

In computing the quantities involved in this subdivision, plant or vegetable material seized shall not be included.

(b) The additional terms provided in this section shall not be imposed unless the allegation that the controlled substance exceeds the amounts provided in this section is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(c) The additional terms provided in this section shall be in addition to any other punishment provided by law.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(e) The conspiracy enhancements provided for in this section shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the direction or supervision of, or in a significant portion of the financing of, the underlying offense.

SEC. 4. Section 2.5 of this bill shall become operative only if (1) both this bill and Senate Bill 1691 of the 1997-98 Regular Session are enacted and become effective on or before January 1, 1999, and (2) Senate Bill 1691 amends Section 11100 of the Health and Safety Code, to revise the language of subdivision (g) of that section to provide criminal penalties for the sale of ephedrine, in which case Section 2 of this bill shall not become operative.



Approved _____, 1998

Governor

